IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No.126 of 2002.
Reserved on: 19.7.2007.

Date of Decision: 09. 8. 2007.

Labo Ram. ….Petitioner.

Versus

Nand Lal and others. …Respondents.

Coram

Hon'ble Mr. Justice Surinder Singh , J.

Whether approved for reporting? Yes.

For the petitioner : Shri P.C. Sharma, Advocate.

For the respondents : Shri O.P. Thakur, Advocate.

Surinder Singh, J.

In this revision petition the order dated 4.8.2002, passed by learned Sub Judge, in Civil suit No. 441/1 of 1993, is under challenge.

Precisely, the facts giving rise to this petition are that, the petitioner herein (Plaintiff), filed a civil suit against the respondents (defendants), for seeking declaration to the effect that he is the owner in possession of Khasra No. 23, 62 and 60 measuring 4-3 Bighas situated in village Bum, Pargana Ajmerpur, (Ghumarwin) Distt. Bilaspur, with a consequential relief of permanent injunction and sought possession of dispossessed during the pendency of lis. Alternatively prayed for the adverse possession, in case, the petitioner failed to prove his plea of a valid sale.

The respondents, in their written statement, denied the claim of the petitioner and raised various preliminary objections. The issues were framed and the evidence by the petitioner was led. The suit was at the stage of leading the evidence of the respondent-defendants, in the meantime, a written compromise duly signed by

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

the parties and their counsel was filed before the trial court on 13.8.2001 whereby the defendants admitted the plaintiff as the owner in possession of the suit land but it also included Khasra No.78 having been left by the defendants in favour of the plaintiff as it being surrounded by the Land of the plaintiff.

Unfortunately, the trial Court took a long time to decide the matter and adjourned it number of times, for about 6 months only for consideration of compromise aforesaid and ultimately on 4.3.2002 the ld. trial court declined to record and pass the decree on its basis. The impugned order reads asunder:

> **"4.3.2002: Present: Shri G.C. Rattan, Adv. for plaintiff.**
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> **Shri H.S. Chandel, Adv. for defendants.**
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> **I have gone through the compromise on record. To my mind this compromise cannot be given effect as already qua the suit land there were specific decrees. Hence now by way of this compromise, the land cannot be transferred to the plaintiff. To my mind a conveyance deed is required to transfer valid title. Hence compromise decree cannot be passed between the parties.**
>
> **For DWs put up on 1-5-2002.**
>
> **Sd/-**
> **SJIC Ghumarwin".**

The above order has been assailed by the petitioner (Plaintiff) in this petition, contending that the compromise aforesaid was signed by the parties and their counsel and the learned trial Court was bound to pass a decree on its basis as per the provision of Order XIII Rule 3 of the Code of Civil procedure. The court did not exercise the jurisdiction vested in it. Therefore, the impugned is legally unsustainable.

Heard and perused the record.

Shri P.C. Sharma, learned counsel for the petitioner has argued that the ld. trial court was bound to follow the procedure and was bound to record its satisfaction, once the Court is satisfied that a valid compromise is arrived at by the parties, the court is under obligation to pass a decree on the basis of the compromise, without going into the technicalities any further.

Contra, Shri O.P. Thakur, Advocate has ventilated that the said compromise had covered other land, than the suit land, therefore, the compromise decree in absence of a registered conveyance deed cannot be passed.

I have considered the rival contentions of the parties carefully.

Order XXIII Rule 3 of the Code of Civil Procedure provides the procedure for compromise of the suit. Under Rule 3, where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfies that plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement/ compromise or satisfaction to be recorded and shall pass a decree in accordance therein so far as it relates to the parties to the suit. Once the terms and conditions of the compromise are found lawful and parties are arriving at such compromise willfully, the court has no option except to pass a decree in terms of compromise.

The perusal of the compromise deed placed on record before the trial court shows that the defendants have admitted the claim of the plaintiff qua the suit land but Khasra No.78 was not subject matter of the suit, though, it was included in the compromise, which means that there has been an adjustment of claims in dispute by mutual concessions and also a mutual promise

inter se the parties, who had a difference and by this compromise, there was an express intention to end the controversy.

The learned Lower Court had opined that the compromise could not be given effect qua the suit land as there have been specific decrees. Therefore, the conveyance deed was required.

On going through the provision of Order XXIII Rule 3 of the Code of Civil Procedure, it is manifest that an agreement or compromise under Rule 3 should be in writing and signed by the parties. The words **"Lawful Agreement or Compromise"** in Rule 3 give rise to a conflict in the matter of interpretation only.

Thus, Court has jurisdiction, in case a dispute between the parties arise with respect to the compromise, to enquire into and decide whether there is lawful compromise in terms of the suit should be decreed. The Court cannot go beyond the compromise and direct the parties to do something, which is not contemplated in the agreement itself. When both the parties accept the fairness and reasonableness of the compromise in the absence of any further material, interest of justice would be served in the compromise. Thus, when the compromise is placed on record inconformity with the rule aforesaid has to accept it.

It is equally settled law that where the plaintiff had already a right in the property and a compromise is entered into, whereby the defendants relinquish their share in favour of the plaintiff, the compromise decree is not registerable. It is only where the right in the property is created for the first time by a particular document that the document requires registration. Clause (vi) of Sub Section (2) of Section 17 of the Indian Registration Act is an exception to sub Section (1) of the Act. This sub section engrafted, is meant to cover a decree of a court including a decree or order expressed to be made on a compromise, which acquires pre-existing rights and

does not create new right, title or interest as in preasenti, in immoveable property of the value of Rs.100/- or upwards. Another view would find the mischief of avoidance of registration, which requires the payment of the stamp duty, embedded in the decree or order. It would, therefore, be the duty of the court to examine in each case on the above principle. If later be the position then the document is compulsorily registrable.

In my considered opinion, in the present case rejecting the compromise, solely on the ground that it requires a conveyance deed is not proper. At the best, the trial court after recording its satisfaction in accordance with Rule 3 aforesaid could have directed that the decree drawn on compromise be registered if the subject matter fell within the purview of exception of Section 17(2)(vi) of the Indian Registration Act.

In view of the above, the impugned order is unsustainable and is accordingly set-aside. The revision petition is allowed. The case is remanded back to the learned trial court with a direction to record its satisfaction, on the basis of the compromise aforesaid, if it is lawful then to pass a compromise decree there upon making a provision for the registration of the decree of the property which falls within the mischief of Section 17 (2)(vi) of the Indian Registration Act, as aforesaid.

The parties are hereby directed to be present before the trial court on 10-9-2007.

The Registry shall ensure that the record of the learned trial court reaches the court well before the next date. The matter is accordingly disposed of.

August 9, 2007. **(Surinder Singh)**
(PDS) **Judge**